IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 1445 109

CATHERINE M. O'NEILL, as Administratrix,

Petitioner,

v.

CUNARD WHITE STAR, LTD.,

Respondent.

PETITION FOR PERMISSION TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE*

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The determination of questions of law raised in the O'Neill case is of great importance to American seamen and to the people of the United States. The members of this organization are mariners employed in all departments of the vessels. The members of this organization in carrying out the purposes of the founders have directed that this petition for leave to file a brief *amicus curiae* in support of the petition be filed.

WHEREFORE, your petitioner respectfully petitions this Honorable Court for leave to file the accompanying brief *amicus curiae,* and that the judgment of the Circuit Court of Appeals for the Second Circuit should be reversed.

ARTHUR DUNN,
Attorney for Petitioner,
Office and P. O. Address,
130 West 42nd Street,
New York City.

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

ARTHUR DUNN, being duly sworn, deposes and says that he is the attorney for the petitioner named in the foregoing petition; that he has read the same, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

ARTHUR DUNN.

Sworn to before me this
4th day of June, 1947.

IRA EHRLICH,
Attorney and Counsellor at Law in the
State of New York, Residing in Kings Co.
With the powers of a Notary Public.
Kings County and Clk's No. 5, Reg. No. A-124-E-9.
Cert. Filed in N. Y. Co. Clk's No. 191, Reg. No. A-237-E-9.
Commission expires March 30, 1949.

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BRIEF OF *AMICUS CURIAE*

Preliminary Statement

The question involved is whether or not the courts below have erred in refusing to take jurisdiction of the defendant, a resident steamship corporation which conducts a marine shipping business in competition with American ship owners.

The public are interested in the outcome of the case because there is involved in the decision the public policy of the United States as to equalization of operating conditions of foreign and American vessels, which are competing in freight rates for the carriage of cargoes emanating in the United States for export, and coming to the United States as imports.

On many occasions in appearances before Congress in urging the passage of the LaFollette Seamen's Act or amendments thereof, Andrew Furuseth urged that the laws of the United States passed by Congress for the benefit of American seamen should be equally extended to foreign seamen; that foreign seamen coming into the ports of the United States as members of the crews of foreign vessels would be permitted to leave their vessels without arrest, and that they should be permitted to have access to the courts of the United States to compel the payment of their wages earned under certain circumstances.

Following the passage of the LaFollette Act, the courts of the United States were opened to foreign seamen without the prepayment of fees or costs for the enforcement of their rights to demand half the wages, that they had then earned. Within a year following the general enforcement of the LaFollette Seamen's Act, wages of foreign vessels, due to the freedom thus given to the crews of foreign vessels were doubled, trebled and in some instances quadrupled, and for the period of years thereafter the *real wages* of foreign seamen approximated the *real wages* of American seamen.

The constitutionality of the Seamen's Act as it affected foreign vessels was upheld by this Court. *Dillon* v. *Strathearn*, 252 U. S. 348. At the present time, due to successful efforts of organized American seamen in effecting contracts for wages by collective bargaining, thus wages are double and in some instances more than double those paid to seamen employed on foreign competing vessels.

The LaFollette Seamen's Act of March 4, 1915, after years of petitioning by seamen, was passed by Congress in 1912, but failed to receive the signature of William Howard Taft, the President of the United States. The Act was repassed by Congress and duly signed by Woodrow Wilson, the President of the United States. In this Act, Congress mandated the President to abrogate all treaties between the United States and foreign nations,

which treaties interfered with enforcement of any of the provisions of said Act of Congress. The President did serve notice and said treaties were duly abrogated.

No new treaties depriving courts in the United States of jurisdiction of the claims of foreign seamen for wages arising under the Seamen's Act have been effected since. No Act of Congress has been passed to modify adversely any of the provisions of the Seamen's Act beneficial to seamen. While the Courts of Admiralty of the United States have on numerous occasions taken jurisdiction of claims for personal injuries of seamen injured on foreign vessels, there has been no decision in any case by this court which is determinative of the issues involved in this particular case. There is, we believe, needed a clear declaration and interpretation of the Seamen's Act, particularly as to the amendment known as the Jones Act, June 5, 1930, U. S. Code Annotated 688, as to its application to cases of injuries and death arising on foreign vessels while within the United States, and as to *vessels* owned by *foreign corporations which are residents* and engage in steamship business within the jurisdiction of the United States.

The decision of the U. S. Circuit Court of Appeals in the O'Neill case encourages the transfer of registry of American vessels to foreign registry and flag as shown by the article in New York Herald Tribune of May 12, 1947:

"N. Y. Herald Tribune—May 12, 1947

Foreign Ships Cutting Into U. S. Maritime Lead

Merchant Marine Institute Says Foreign Craft Take a Rising Share of Trade

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America's position as the world's leading maritime power is threatened by steadily increasing foreign competition, the American Merchant Marine Institute reported yesterday.

Foreign shipping captured an increasing part of American trade in 1946, and foreign cargo fleets are carrying more and more cargoes this year, the institute stated. Last year American cargo ships transported 74.1 per cent of United States exports during the first six months, but carried only 60.7 per cent during the second six months. Imports by the United States on American ships slipped from 67.8 per cent to 58.3 per cent during the same periods.

Growth of foreign competition was attributed by the institute to three factors:

1. Production of large numbers of ships abroad while there is practically no new building in this country.

2. Purchase of more than 800 American war-built ships by foreign interests and operation of approximately 300 American ships by foreigners under lend-lease agreements.

3. Certain countries have expanded their pre-war fleets many times. Among them are Russia, Canada, Brazil and Argentina. Switzerland, Colombia, Costa Rica, Ecuador, Greenland, Iceland and Eire have merchant marines for the first time in history.

Many countries, the institute said, are building up shipping as a source of dollar exchange.

The full impact of increased competition will not be felt until coal and grain relief shipments abroad level off, the institute said. Then, with keen competition for cargoes, the American merchant fleet will be seriously handicapped with its high fixed operating costs."

POINT I

The Seamen's Act of March 4, 1915, including Section 20, as amended by the Jones Act of June 5, 1920, is applicable to accidents arising on foreign vessels while within the waters of the United States and to causes of action arising on foreign vessels owned by foreign corporations resident and doing business within the United States.

Prior to the passage of the Seamen's Act, wages on foreign vessels averaged from $7.00 to $20.00 a month. Aside from four small passenger ships on the Atlantic Coast, the *"St. Louis"*, *"St. Paul"*, *"Philadelphia"*, and the *"New York"*, and a few vessels running between San Francisco and Hawaii, and San Francisco and Alaska, the United States had no foreign merchant marine. The Seamen's Act was passed at about the same time Congress established a ship building policy for the United States because of the emergency of World War I. Thousands of new American vessels were soon manned by seamen of foreign vessels who had demanded half their wages, and deserted foreign vessels because of the higher wages available on American ships. These seamen were encouraged to and did become citizens of the United States. The courts of the United States were opened to them without the prepayment of fees or costs to enforce their rights under the Seamen's Act.

This Court in 1918 in *Ex parte Abdu*, 247 U. S. 27, held that "courts" of the United States open to seamen did not include "Appellate Courts" but Congress on June 5, 1920, amended Chapter 27, 40 Stat. 157, to read as follows:

> "Courts of the United States, *including appellate courts,** hereafter shall be open to seamen, without

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* Words in italics were added by the Amendment.

furnishing bonds or prepayment of or making deposit to secure fees or costs, for the purpose of entering and prosecuting suit or suits in their own name and for their own benefit for wages or salvage and to enforce laws made for their health and safety (June 12, 1917, c. 27, Sec. 1, 40 Stat. 157; July 1, 1918, c. 113, Sec. 1, 40 Stat. 683)."

At the end of the last War the Standard Oil Company of New York attempted to operate its tankers under the British flag in order to hire crews at lower than the American rate of wages. The case came before the United States District Court, Southern District of New York, in *Mattes* v. *Standard Transportation Company, Ltd.*, 274 Fed. 1019 (April 26, 1921). We quote from the opinion of the Trial Court, page 1021:

"The Wabash had shipped a Chinese crew at Calcutta or Bombay and these had deserted in New York. Their desertion may be attributed to the recent laws which enable them to ship here at higher wages and the result was that intended, i.e., to compel the Captain either to raise his wages to the Amerloan standard, $85.00 or $95.00, or take a new crew at those rates."

In the *Lou Ling Sing* case against the same respondent, 274 Fed. 1017 (May 2, 1921), the Court was dealing with the case of a Chinese crew who had subsequently been hired by the respondent and the validity of their demand for half wages was sustained.

In 1924, the same Judge Learned Hand, denied a motion to dismiss a libel of a British seaman to recover damages from a British steamship company which had an office and place of business in the United States. *Stewart* v. *Pacific Steam Navigation Company,* 3 Fed. (2d) 329. At that time, when the construction and ap-

plicability of the various provisions of the Seamen's Act to foreign vessels was frequently before the courts of the United States, it seemed to have been the opinion of District Judge Hand that the Jones Act applied to foreign steamship companies resident and competing with American steamship companies. See page 12 of petitioner's brief.

"The Badger", 246 Fed. 966;
"The Italier", 275 Fed. 712;
"The London", 241 Fed. 863, 154 C. C. A. 565;
"The Ixion", 237 Fed. 142;
"Rathlin Head", 262 Fed. 741;
"The Meteor", 241 Fed. 735;
"The Haskell", 235 Fed. 914;
"The Delagoa", 244 Fed. 835;
"The Strathern", 239 Fed. 583;
"The Clematis", 244 Fed. 484.

In 1928, the Circuit Court of Appeals, Second Circuit, held that the provision opening the courts of the United States to seamen without the prepayment of fees applied to actions brought for personal injuries under the Jones Act. At page 813, the Court said:

> "In *Chelentis* v. *Luckenbach*, 247 U. S. 372, * * * this Section was held not to create a new cause of action but undoubtedly it was nonetheless designed to promote safety of seamen within the meaning of the Section. The fees here in question are certain docket fees allowed to the successful litigant in this court. The Jones Act is an additional remedy to the Seamen's Act and undoubtedly was intended to be consistent with the spirit of that legislation which was directed to promote the welfare of American seamen in the merchant shipping of the United States. In line with this intention, it is apparent that in an action invoking the aid of the Jones Act, which was intended for the welfare of American seamen, the

courts of the United States, both trial and appellate, should be open without the prepayment of costs to seamen. * * *

The application for mandamus is granted."

The Maritime Law of the United States is uniform. The rights of a longshoreman injured aboard a vessel owned by a resident alien, Hamburg American Steam Packet Company, are governed by the laws of the United States.

Imbrovek, 234 U. S. 52.

In the *Haverty* case, 272 U. S. 50, this Court held that longshoremen because they do the work traditionally done by mariners are entitled to enforce their rights as seamen under the Jones Act, U. S. C. A. 688.

It must, we submit, necessarily follow that the rights of the citizens of the United States and resident alien competing steamship companies must be governed by the Maritime Law of the United States which include the Jones Act, United States Code Annotated 688.

See *Panama* v. *Johnson,* 264 U. S. 375.

In the interest of seamen's safety and public policy, the LaFollette Seamen's Act required minimum standards of space ventilation, sanitation, in crew quarters, that seamen must be able to understand the orders of the officers, that they should be divided in equal watches. *O'Hara* v. *Luckenbach,* 269 U. S. 364. Subsequently, an international treaty was adopted at London in 1929. In the closing hours of Congress in 1936, this treaty was ratified by the United States Senate in the following language:

"(1) That nothing in this convention shall be so construed as to authorize any person to hold any

seaman, whether a citizen of the United States of America or an alien, on board any merchant vessel, domestic or foreign, against his will in a safe harbor within the jurisdiction of the United States of Amerca, when such seaman has been officially admitted thereto as a member of the crew of such vessel or to compel such seaman to proceed to sea on such vessel against his will;

(2) That nothing in this convention shall be so construed as to nullify or modify Section 4 of the Seaman's Act approved March 4, 1915, 38 Stat. 1164, as intepreted by the Supreme Court of the United States in Strathearn v. Dillon, 252 U. S. 348, and

(3) That nothing in this convention shall be so construed as to prevent the officers of the United States of America who exercise the control over vessels provided for in Article 54 from making such inspection of any vessel within the jurisdiction of the United States as may be necessary to determine that the condition of the vessel seaworthiness corresponds substantially with the particulars set forth in the certificate, that the vessel is sufficiently and efficiently manned, and that it may proceed to sea without danger to either passengers or crew, or to prevent such officers from withholding clearance to any vessel which they find may not proceed to sea with safety, until such time as any such vessel shall be put in a condition so that it can proceed to sea without danger to the passengers or crew."

It is respectfully submitted that this enactment shows that Congress intended to continue the policy of enforcing all of the provisions of the Seamen's Act, including the Jones Act, equally against all vessels entering the waters of the United States and against the owners of all resident steamship companies doing business in competition with owners of merchant vessels of the United States,

and that since citizens of the United States will otherwise be without remedy, the petition for a writ of certiorari herein should be granted.

Respectfully submitted,

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